

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:

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Refer Reply To:

CC:PSI:B01 – PLR-132341-08

Date:

October 01, 2008

X =

State =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Trust 1 =

Trust 2 =

Trust 3 =

PLR-132341-08

Trust 4 =Trust 5 =Trust 6 =

Dear :

This responds to a letter dated July 21, 2008, submitted on behalf of X, requesting a ruling under section 1362(f) of the Internal Revenue Code.

Facts

The information submitted states that X was incorporated under the laws of State in Year 1, and elected to be an S corporation effective Date 1. On Date 2, Trust 1 and Trust 2 acquired shares of stock in X. On Date 3, Trust 3 acquired shares of stock in X. On Date 4, Trust 4 and Trust 5 acquired shares of stock in X. On Date 5, Trust 6 acquired shares of stock in X.

X represents that Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6, qualify to be treated as qualified subchapter S trusts (QSSTs) described in § 1361(d), except that the beneficiary of each respective trust failed to make the election under § 1361(d)(2). Therefore, these trusts were not eligible S corporation shareholders, and X's S corporation election terminated on Date 2. Moreover, X's S corporation election would have terminated on Date 3, Date 4, or Date 5, due to the transfers of X stock to the trusts on those dates, had the election not already terminated on Date 2.

X represents that X and X's shareholders (including the beneficiaries of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6,) have filed tax returns consistent with X being an S corporation and with the trusts being treated as QSSTs. X further represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and each person who was or is a shareholder of X at any time since Date 2 agree to make any adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary with respect to such period.

Law and Analysis

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 75 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in section 1361(c)(2), or an organization described in section 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1361(d)(1) provides that a QSST whose beneficiary makes an election under section 1362(d)(2) will be treated as a trust described in section 1361(c)(2)(A)(i), and the QSST's beneficiary will be treated as the owner (for purposes of section 678(a)) of that portion of the QSST's S Corporation stock to which the election under section 1361(d)(2) applies. Under section 1361(d)(2)(A), a beneficiary of a QSST may elect to have section 1361(d) apply. Under section 1361(d)(2)(D), this election will be effective up to 15 days and two months before the date of the election.

Section 1361(d)(3) defines a QSST as a trust (A) the terms of which require that (i) during the life of the current income beneficiary, there shall be only one income beneficiary of the trust; (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary; (iii) the income interest of the current beneficiary in the trust shall terminate on the earlier of the beneficiary's death or the termination of the trust; and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to that beneficiary; and (B) all of the income (within the meaning of section 643(b) of which is distributed (or required to be distributed) currently to one individual who is a citizen or resident of the United States.

Section 1362(f) provides, in relevant part, that if (1) an election under section 1362(a) by any corporation was not effective for the taxable year for which made (determined without regard to section 1362(b)(2)) by reason of a failure to meet the requirements of section 1361 (b) or to obtain shareholder consents, (2) the Secretary determines that the circumstances resulting in such termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in ineffectiveness, steps were taken so that the corporation is once more a small business corporation, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to section 1362(f), agrees to make any adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to the period, then, notwithstanding the circumstances resulting in the ineffectiveness, the corporation shall

be treated as continuing to be an S corporation during the period specified by the Secretary.

Conclusion

Based solely on the facts submitted and the representations made, we conclude that the termination of X's subchapter S election on Date 2 was inadvertent within the meaning of section 1362(f). Therefore, X will be treated as continuing to be an S corporation from Date 2, and thereafter, provided that the respective income beneficiaries of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 file a QSST election with the appropriate service center within 60 days of the date of this letter. A copy of this letter should be attached to each QSST election.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is otherwise eligible to be treated as an S corporation or whether the trusts are eligible to be treated as QSSTs.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your representative.

Sincerely,

David R. Haglund

David R. Haglund
Senior Technician Reviewer
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for section 6110 purposes

cc: